

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DONALD EUGENE COOKS,

Plaintiff,

v.

P.D. TAYLOR, et al.,

Defendant(s).

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Case No. CIV-17-774-D

REPORT AND RECOMMENDATION

Plaintiff, a prisoner appearing *pro se*, has filed this action under 42 U.S.C. § 1983 alleging various violations of his constitutional rights. United States District Judge Timothy DeGiusti has referred the matter to the undersigned magistrate judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B).

In accordance with that referral, the undersigned entered an Order requiring the Plaintiff to either pay the \$400.00 filing fee or submit a motion for leave to proceed *in forma pauperis* no later than August 7, 2017. The Court advised the Plaintiff that his failure to comply with this Order may result in the dismissal of this action without prejudice to re-filing. As directed in said Order the Clerk of Court forwarded to Plaintiff the necessary forms to make application to proceed *in forma pauperis*. See ECF No. 6 and Staff Note dated 7/20/2017.

A review of the court file indicates that as of this date, Plaintiff has neither paid the filing fee in accordance with § 1914 and LCvR3.2 nor submitted a motion for leave to proceed in forma pauperis. In fact, Plaintiff has not responded to the Court's order in any way.

The undersigned finds that Plaintiff's failure to comply with the Court's Order, in light of the Court's right and responsibility to manage its cases, warrants dismissal of this action without prejudice. *See Nasious v. Two Unknown B.I.C.E. Agents at Arapahoe County Justice Center*, 492 F.3d 1158, 1161 n.2, 1162 (10th Cir. 2007) (*sua sponte* dismissal for failure to comply with Court's orders permitted under federal rules, and court need not follow any particular procedures in dismissing actions without prejudice for failure to comply).

RECOMMENDATION

Based on the foregoing findings, it is recommended that this action be **DISMISSED without prejudice** for Plaintiff's failure to comply with this Court's orders, specifically failing to submit the necessary paperwork required for service. Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of Court by **September 14, 2017**, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Plaintiff is further advised that any failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

This Report and Recommendation **disposes of all issues** referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED on August 28, 2017.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE